IN THE HIGH COURT OF JUDICATURE OF BOMBAY

ORDINARY ORIGINAL CIVIL JURISDICTION

SHOW CAUSE NOTICE NO.182 OF 1995
IN
NOTICE OF MOTION NO.725 OF 1992
IN
SUIT NO.485 OF 1992

M.P.Navalkar ..Plaintiff.

V/s.

Vinayak P. Navalkar & Ors. ..Defendants.

Mr.M.W.Padgonkar for defendant No.1.

CORAM: A.M.KHANWILKAR,J

DATE : JULY 26, 2007.

P.C. :

1. Heard counsel for the Defendant No.1. None appears for the Plaintiff or other Defendants. Perused the reply affidavit filed pursuant to the Show Cause Notice under consideration.

2. After having considered the stand taken on affidavit, I find substance in the explanation offered by the noticee. In the first place, it is not a case of contradictory stand taken by the noticee, as such. At best, it is a case of incorrect stand taken before the Small Causes Court. The affidavit filed before the Small Causes Court is dated 17th January, 1989, much before filing of the

present suit for partition in 1992. The stand, so taken in the affidavit dated 17th January, 1989 was under mistaken belief and legal advise that it is only the Plaintiff and Defendant No.1 would succeed to the suit property. Significantly, no such stand is taken in the present suit, which is for partition. In the present suit, the Defendant No.1 has admitted that besides him, the suit property will be shared by the Plaintiff and two sisters. Therefore, no prejudice is going to be caused to the other Defendants on account of such stand. In fact, that stand will enure to the benefit of the other Defendants. Suffice it to observe that it is not a case of intentional misstatement of the fact, which will invite action of perjury.

3. Taking overall view of the matter, therefore, the Show Cause Notice will have to be discharged. Ordered accordingly.

(A.M.KHANWILKAR,J)